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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Board on Universal Service	)	CC Docket No. 96-45
	)	

To: The Commission

PETITION FOR RECONSIDERATION

Ozark Telecom, Inc. ("Ozark"), by its attorneys, and pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. § 405(a), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby submits its Petition for Reconsideration of the Commission's Report and Order ("R&O"), released May 8, 1997, pertaining to the above-captioned proceeding.[1]

I. Statement of Interest

Ozark is an FCC licensee that provides discounted paging service to low income users and unemployed individuals seeking employment. If the Commission imposes upon Ozark the universal service support mechanism charges proposed in the R&O, Ozark will no longer be able to provide its paging services to low income and unemployed users. Accordingly, Ozark is an interested party in this proceeding.

II. Summary of the Report and Order

The Commission, through the R&O, attempts to implement the Congressional

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[1] The Report and Order was published in the Federal Register on June 17, 1997. Accordingly, this Petition for Reconsideration is timely filed.

mandate for universal service, as stated in Section 254 of the Telecommunications Act of 1996 ("Telecom Act"), 47 U.S.C. § 254. The Congressional mandate is based upon certain principles, intended to preserve and advance universal service. Two of those principles are: (a) that "[C]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications . . . services. . . . ; and (b) that telecommunications service providers should "make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254 (b) (3), (4).

In pertinent part, the R&O sets forth proposed rules, purportedly to carry out Congress' mandate that low-income consumers, and those in rural, insular and high cost areas, have access to affordable telecommunications service. To that end, the Commission proposes expansion of the Lifeline and Link Up programs. R&O, ¶ 326. Lifeline reduces qualified low-income consumers' monthly phone charges with matching federal and state funds. Link Up provides federal support that reduces qualified low-income consumers' initial connection charges by up to one-half .

In order to fund the various universal service programs, including Lifeline and Link Up, the Commission proposes that all telecommunications carriers, including paging carriers, that provide interstate telecommunications services, contribute to the universal service support mechanisms. Each carrier's universal service contributions are to be assessed against that carrier's end-user revenues. R&O, ¶ 772.

Congress provided for an exemption from universal service contributions for those "carrier[s] or class of carrier[s] . . .if the carrier[s'] telecommunications activities are limited to such an extent that the level of such carrier[s'] contribution to the preservation and advancement of universal service would be *de minimis*. 47 U.S.C. § 254(d). The Commission limited the *de minimis* exemption to carriers whose contributions would be less than the administrative costs of collecting those contributions. R&O, ¶ 802. The Commission expressly denied the *de minimis* exemption to those carriers, including paging providers, that are ineligible to receive universal service support, unless they fall within the narrow category of carriers whose contributions would be less than the cost of collection. R&O, ¶¶ 804-805.

III. Requiring Ozark to Contribute to Universal Service Support Mechanisms Is Contrary to Congressional Mandate And the Commission's Own Policies

One of Congress' universal service principles is that telecommunications service providers should make an "equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(4). To that end, the Commission adopted the principle of "competitive neutrality"as a guiding principle on which it is basing its policies for the preservation and advancement of universal service. R&O, ¶¶ 46, 48. Competitive neutrality means that "universal service support mechanisms and rules [must] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." R&O, ¶ 47.

The Commission has determined that only common carriers that offer services such as single party service, access to emergency service, access to interexchange service, voice-grade access to the public switched network, and access to operator services are eligible to receive universal service support. R&O, ¶ 56. Paging, by the nature of its technology, does not provide the services necessary to make it eligible to receive universal service support. The Commission nonetheless requires paging carriers to contribute fully to the universal support mechanisms. R&O, ¶ 805.

Forcing paging carriers to pay into the universal service support mechanisms, while being ineligible for universal support payments, violates Congress' equitable and nondiscriminatory principle, stated in Section 254(b)(4) of the Telecom Act. Requiring "ineligible" paging providers to contribute to the universal service fund, from which they will receive no benefit, is inequitable and discriminatory.

Moreover, the Commission's requirement that "ineligible" paging carriers "contribute" to the universal service support mechanisms violates its own competitive neutrality principle. The Commission confuses the issue by claiming that "although some paging carriers may be ineligible to receive support, all telecommunications carriers benefit from a ubiquitous telecommunications network." R&O, ¶ 805. That argument completely ignores the fact that paging carriers' forced "contributions" will subsidize services provided by the two-way telephone industry, which is in direct competition with the paging industry. This scenario provides an advantage for telephone providers, and favors telephone technology over paging technology. Consequently, the principle of competitive neutrality is disregarded by the Commission.

The Commission further attempts to justify its demand that ineligible paging carriers pay to subsidize competing industries by arguing that Section 254(d) of the Telecom Act's requirement that "every telecommunications carrier that provides interstate telecommunications services must contribute to universal service" does not limit contributions to eligible carriers. R&O,¶ 805. The Commission claims that Section 254(d) allows it to refuse to apply the *de minimis* exemption to ineligible carriers. R&O, ¶ 805. That argument is contrary to the very nature of Congress' universal service principles.

The Commission states that the "core" or "designated" services that will receive universal support are based on the "principles in section 254 [of the Telecom Act]." R&O, ¶ 56. Those universal service principles are "base polices for the preservation and advancement of universal service." 47 U.S.C. § 254(b). Because the chosen eligible services are based on their usefulness for the preservation and advancement of universal service, and because paging services are ineligible, it stands to reason that paging carriers' contributions to the preservation and advancement of universal service are *de minimis*. Hence, according to the *de minimis* exemption in Section 254(d) of the Telecom Act, paging carriers should be excluded from having to contribute to the universal service support mechanisms. Consequently, both the Telecom Act and the Commission's policies require that paging services either be eligible to receive universal service support, or be excluded from having to pay into the universal support mechanisms.

IV. Ozark's Existing Discount Paging Service Comports With the Commission's Low Income Program Goals For Universal Service And Should Not Be Financially Harmed

The Commission declares that, as part of its Congressionally mandated responsibility to "preserve and advance universal service," access to telecommunications services should be "provided to 'low-income' consumers in all regions of the nation." R&O, ¶ 335. The

Commission thus proposes that the Lifeline and Link Up programs, which provide subsidies for low income consumers' basic telephone service, should be available nationwide.

The Commission plans to ensure that Lifeline services be provided to "low-income consumers in every state . . .and that all eligible telecommunications carriers should be required to provide Lifeline Service." R&O, ¶ 326. Regarding funding for universal service to low income consumers, the Commission states that "the collection and distribution for Lifeline and Link Up should be competitively neutral." R&O, ¶ 327.

The Commission stated that the Telecom Act "embraces the principle that universal service should be provided to all Americans at affordable rates . . . ." R&O, ¶ 353 (emphasis added), and accordingly it will expand the Link Up and Lifeline programs. Although Lifeline and Link Up are very laudable programs, there are numerous Americans for whom those programs would be of little or no benefit.

For example, some low income individuals cannot afford telephones, even with the Link Up and Lifeline subsidies. Additionally, people with no fixed address would not benefit from basic telephone service assistance, because they have no residence which can be linked to the public switched network.

Conversely, paging services, such as those provided by Ozark, are ideal for those individuals who may not benefit from the Lifeline and Link Up programs. Due to the portability of pagers, people with no permanent addresses may utilize pagers as a means of communicating with potential employers and providers of essential services. If paging service is priced economically, therefore, the Telecom Act's requirement of providing affordable telecommunications service to all Americans would be furthered. The FCC's plan to impose universal payment obligations on paging carriers runs contrary to that laudable goal by pricing those services out of reach of low income subscribers.

For example, Ozark provides basic paging service to low income consumers and unemployed individuals looking for work, at the discounted flat fee of only $3.00 per month. At that price, Ozark barely "breaks even" with this service. Ozark's service furthers both Congress' and the Commission's goal of ensuring universal access to telecommunications services. If, on the other hand, Ozark had to pay a universal service fee for each of these subscribers, it would lose money on every subscriber. If Ozark passed the cost though to its low income customers, they would probably drop the service, for many their only link to the nation's telecommunications network.

Because Ozark is an ineligible service provider, and because of the technology it employs, Ozark would not be providing either Link Up or Lifeline services under the Commission's plan. See R&O, ¶¶ 326, 328. Moreover, the proposed funding for those programs, which the Commission seeks to achieve by requiring all interstate telecommunications carriers to contribute thereto, is not, for the reasons stated above, "competitively neutral." Accordingly, the most efficient, equitable, and nondiscriminatory means of ensuring that low income Americans have access to affordable telecommunications service is to exempt Ozark and other paging providers from the universal service support contribution requirement.

As an ineligible carrier, Ozark would receive no financial support under the Commission's plan. Consequently, if Ozark is forced to contribute to the universal service fund, it would no longer be financially able to provide its discounted paging service to low income consumers. If Ozark sought to pass on the cost of its contributions to its customers, the cost of that discounted paging service would become prohibitive for its low income and unemployed subscribers. This defeats the whole purpose of the Commission's universal service plan, and is contrary to Congress' universal service mandate.

Moreover, under the Commission's plan, Ozark is competitively disadvantaged for offering its discounted paging service. The Commission proposes that carriers that provide services eligible for universal service support, may receive credits against their contributions for those services they provide at a discount or below cost. Additionally, carriers that provide services to eligible schools, libraries or rural health care providers may "offset their required contribution by an amount equal to the difference between the pre-discount price for service and the amount charged to the eligible institution." R&O, ¶ 856.

Under the Commission's current universal service plan, therefore, Ozark will be penalized financially for offering its discounted paging service to low income Americans, and will be subsidizing its competitors for providing their discounted services. Consequently, the Commission's plan is inequitable, discriminatory, and is contrary to its own competitive neutrality principle. Moreover, the plan will take away access to telecommunications services among low income consumers in Ozark's service area, thereby violating the Congressional mandate.

V. Conclusion

For all the foregoing reasons, Ozark respectfully requests that the Commission reconsider the provisions of its proposed universal service plan described herein, and exempt paging carriers from the required universal service support payment requirements, in order to further Congress' and the Commission's universal service goals in an equitable and nondiscriminatory manner.

Respectfully submitted,

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